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09/995,097	11/27/2001	Nick (Nicholas Sheppard) Bromer		9382

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EXAMINER
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WALTERS, JOHN DANIEL

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* NICK (NICHOLAS SHEPPARD) BROMER

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Appeal 2009-013387  
Application 09/995,097  
Technology Center 3600

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Before: WILLIAM F. PATE III, JENNIFER D. BAHR, and  
JOHN C. KERINS, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 5, 28, 29, and 31-40. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to a dorsiflexion skate brake. Claim 5, reproduced below, is illustrative of the claimed subject matter:

5. For a user having a foot with a toe and standing on a skate, the skate including a position for the foot; a skate braking mechanism comprising:

a brake; and

a lifter operatively coupled to the brake and pressable upward by a toe motion consisting of an upward rotation of at least one phalanx bone of the toe relative to at least one metatarsal bone of the foot, while the user's foot is on the position, the toe motion acting to actuate the brake;

whereby the brake is actuated according to a motion of the toe, which is not contrary to a natural motion of the toe to maintain balance of the user.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Hoskin	5,183,275	Feb. 2, 1993
Carlsmith	5,232,231	Aug. 3, 1993
TenEyck	5,569,629	Oct. 29, 1996

## REJECTIONS

Claims 5, 28, 29, 35-38 and 40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Carlsmith. Ans. 4.

Claims 31-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlsmith, and TenEyck. Ans. 5.

Claim 39 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlsmith, and Hoskin. Ans. 5.

### OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellant and the Examiner. As a result of this review, we have determined that the applied prior art does not establish that the claimed subject matter lacks novelty, nor does the prior art establish that the subject matter of the claims is *prima facie* obvious. Therefore the rejections on appeal are reversed. Our reasons follow.

Appellant's claim 5 requires that the lifter be operable by upward toe motion of at least one phalanx bone relative to the metatarsal bones. This limitation clearly requires that the lifter be operable by movement of one portion of the foot with respect to another portion of the foot.

On the other hand, Carlsmith discloses a boot 62 pivotable on a frame 15 about shaft 23 acting as the pivot point. Col. 9, ll. 35-42. It is not in doubt that the boot pivoting on the frame actuates the Carlsmith device. *See* col. 6, ll. 43-48; col. 10, ll. 25-51 and 59-67. Consequently it can be seen that there is no movement of one portion of the foot relative to the other portions of the foot that actuates the braking in Carlsmith. In Carlsmith, the foot inside the boot moves as a unit as the boot pivots around pivot pin 23 and forces the heel downward to actuate the braking. Since all of the rejections on appeal are based on the Examiner's erroneous fact finding with respect to the workings of the Carlsmith skate, none of the rejections on appeal, be they under § 102 or § 103, can be sustained.

The patent to Hoskins also discloses a roller skate brake. However, the teaching of Hoskins is to apply the brake by a pivotal motion of the

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Application 09/995,097

entire skate about the rear wheel. See col. 6, ll. 46-58. This teaching cannot ameliorate the difficulties we have found with respect to the Carlsmith patent.

#### DECISION

The rejection of claims 5, 28, 29, 35-38 and 40 under 35 U.S.C. § 102(b) is reversed.

The rejections of claims 31-34 and 39 under 35 U.S.C. § 103(a) are reversed.

#### REVERSED

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